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*Attorneys for Defendants*  
*Attorney General Kristin K. Mayes,*  
*ADOT Director Jennifer Toth*  
*and State of Arizona*

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF ARIZONA**

Mi Familia Vota, et al.,

Plaintiffs,

v.

Adrian Fontes, in his official capacity as  
Arizona Secretary of State, et al.,

Defendants.

No. 2:22-cv-00509-SRB (Lead)

**STATE AND ATTORNEY**  
**GENERAL'S POSITION ON**  
**ARIZONA REPUBLICAN PARTY'S**  
**MOTION TO INTERVENE**

(Before the Hon. Susan R. Bolton)

**AND CONSOLIDATED CASES**

No. CV-22-00519-PHX-SRB  
No. CV-22-01003-PHX-SRB  
No. CV-22-01124-PHX-SRB  
No. CV-22-01369-PHX-SRB  
No. CV-22-01381-PHX-SRB  
No. CV-22-01602-PHX-SRB  
No. CV-22-01901-PHX-SRB

1 Defendants State of Arizona and Attorney General Kris Mayes (collectively “the  
2 State”) do not oppose the Arizona Republican Party’s motion to intervene (Doc. 721).  
3 However, in the interests of candor, the State believes it ought to notify the Court of the  
4 following issue, in case the Court deems it relevant to the question of permissive  
5 intervention.

6 There are ethical limits on whether a government attorney who represents the  
7 government in a lawsuit can continue working on the same lawsuit after leaving  
8 government employment, if the government does not give informed consent. Unless a  
9 law expressly permits otherwise, a government attorney “shall not represent a private  
10 client in connection with a matter in which the lawyer participated personally and  
11 substantially as a public officer or employee, unless the appropriate government agency  
12 gives its informed consent, confirmed in writing, to the representation.” Arizona Rule of  
13 Professional Conduct (“ER”) 1.11(a). In addition, “[n]o lawyer in a firm with which that  
14 lawyer is associated may knowingly undertake or continue representation in such a  
15 matter” unless certain conditions, including a screen from the outset and advance written  
16 notice to the government, are met. *Id.*

17 The Arizona Republican Party is represented in this matter by Holtzman Vogel  
18 Baran Torchinsky & Josefiak (“Holtzman Vogel”). The State has doubts about whether  
19 Holtzman Vogel may represent the Arizona Republican Party in this matter consistent  
20 with ER 1.11(a). This is because Holtzman Vogel currently employs an attorney who  
21 previously represented the State in this case, including signing the State’s Motion to  
22 Dismiss, when Mark Brnovich was Attorney General. That attorney was not initially  
23 screened from Holtzman Vogel’s representation of the Arizona Republican Party in this  
24 matter.

25 The Arizona Republican Party filed the motion to intervene on May 2, 2024. On  
26 May 3, counsel for the State inquired with Holtzman Vogel as to this attorney’s  
27 involvement in this matter. Later that day, Holtzman Vogel responded that no screen was  
28 necessary because the attorney had a client waiver, but that it had nonetheless screened

1 that attorney in response to the State’s email. In subsequent correspondence, Holtzman  
2 Vogel informed the State that this attorney worked “less than five hours” on the motion  
3 to intervene.

4 Counsel for the State was unable to locate any client waiver for this matter, and  
5 therefore asked Holtzman Vogel for a copy of the waiver. In response, Holtzman Vogel  
6 sent a letter signed by Attorney General Mark Brnovich on his last business day in  
7 office—December 30, 2022—purporting to provide consent on behalf of the State and  
8 Attorney General’s Office, on a blanket prospective basis, for this attorney (and four  
9 others) to represent other unspecified clients in 33 lawsuits identified in the letter  
10 (including this case) and in unidentified amicus matters. This letter is attached as Exhibit  
11 A. To the best of the State’s knowledge, this letter had not previously been shared with  
12 any personnel who currently work in the Attorney General’s Office (including the  
13 Attorney General herself). Earlier today, Attorney General Mayes formally revoked the  
14 purported consent in Attorney General Brnovich’s letter.

15 Given the situation, the State has concerns about whether the State and Attorney  
16 General’s Office gave informed consent, within the meaning of the ethical rules, to all the  
17 representations in Attorney General Brnovich’s letter, including the present case. The  
18 term “informed consent” is defined as “agreement by a person to a proposed course of  
19 conduct after the lawyer has communicated adequate information and explanation about  
20 the material risks of and reasonably available alternatives to the proposed course of  
21 conduct.” ER 1.0(e). The State is skeptical that an attempt to waive all conflicts,  
22 including unforeseen and unknowable conflicts, on a blanket prospective basis for 33  
23 lawsuits and unidentified amicus matters, can comply with the requirements of ER 1.0(e)  
24 and 1.11(a), including the requirement that the lawyer “communicate[] adequate  
25 information and explanation about the material risks of and reasonably available  
26 alternatives to the proposed course of conduct.” ER 1.0(e). Holtzman Vogel has not  
27 identified any other communications to Attorney General Brnovich that would serve to  
28 fulfill the requirement of informed consent. And if the letter does not meet the

1 requirements for a waiver under ER 1.0(e) and ER 1.11(a), the screen that Holtzman  
 2 Vogel implemented on May 3 was too late. Counsel for the State expressed their concerns  
 3 to Holtzman Vogel, and the parties have so far disagreed on this matter.

4 Given the procedural posture of this case, the State does not oppose the Arizona  
 5 Republican Party's intervention, but in the interests of full disclosure believes it is  
 6 important to provide the Court with this information. The State understands that the Court  
 7 has broad discretion when ruling on motions for permissive intervention, and ethical  
 8 issues may be relevant to the Court's analysis. *See, e.g., Donnelly v. Glickman*, 159 F.3d  
 9 405, 412 (9th Cir. 1998) (explaining district court's discretion to deny permissive  
 10 intervention); *Kirsch v. Dean*, 733 F. App'x 268, 279–80 (6th Cir. 2018) (describing  
 11 situation in which district court considered ethical question in context of permissive  
 12 intervention).

13 RESPECTFULLY SUBMITTED this 30th day of May, 2024.

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 15 **KRISTIN K. MAYES**  
 16 **ATTORNEY GENERAL**

17 By: /s/ Joshua D. Bendor

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